IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 130 OF 2004

Shri Chandrashekhar Y. Bandekar
R/o. Angle Chawl, Room No.4,
Ratwado, Navelim, Salcete, Goa. ... Applicant

versus

1. Smt. Anandi A. Naik
R/o P.H.E. Govt.Quarters,
Borda, Margao, Goa.

2. State
(Through P.P. of the
High Court). ... Respondents

Mr. P. K. Gude, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.2/State.

CORAM : N. A. BRITTO, J.

DATE : 25TH JUNE, 2004.

ORAL ORDER

Heard Mr. P. K. Gude, learned Counsel for the Applicant. The Applicant's Appeal converted into revision was rejected by this Court by Order dated 5th December, 2003, but this Court was pleased to grant the Applicant six weeks further time from that day for complying with the Order of the Court below. Liberty was given to the Respondents, in case they had any objection to approach this Court for recalling this

part of the Order, which request would be considered appropriately. Thereafter, the Applicant filed another application dated 13th February, 2004, seeking further extension of time of four weeks to make the said payments but when the said application was taken up for consideration on 29th April, 2004, this Court found that none was present for the Applicant and observing that four weeks had already expired the Applicant was not entitled to be granted any further extension and, therefore, the application was rejected. The Applicant has now filed an application dated 6th May, 2004, styling the same as an application for restoration of the application dated 13th February, 2004.

2. Mr. P. K. Gude, learned Counsel on behalf of the Applicant has invited my attention to Sections 144 and 145 of the Negotiable Instruments Act, 1881, which provides for mode of service and evidence to be given on Affidavit and has submitted that the proceedings are quasi-criminal. I find that there is no merit in the said submission. Though the said special provisions have been made for enquiring into and trying an offence punishable under Section 138 of the said Negotiable Instruments Act, 1881, the nature of enquiry and trial cannot be considered as quasi-criminal proceedings. The trial for an offence under Section 138 is a criminal trial and its nature is

criminal and, therefore, restoration applications cannot be entertained in such proceedings. Mr.Gude, learned Counsel has next submitted that the time be extended pursuant to the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 and has placed reliance on certain observations of the Hon'ble Supreme Court Digest of the year 2001 page 841 wherein it is observed that Section 482 of the Code of Criminal Procedure confers on the High Court inherent powers to make such orders as would be necessary to give effect to any Order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is further observed that the Section has been embodied to cover the lacunae which are sometimes found in the procedural law.

3. In my opinion, this Court with great reluctance granted six weeks time to the Applicant for complying with the Order of the Court below on 5th December, 2003, and when the Applicant made the said application dated 13th February, 2004, the time given had already lapsed. All that was stated in the application dated 13th February, 2004, was that the Applicant was in financial difficulty but had stated nothing more to buttress the said statement. I am of the opinion that the Applicant had had sufficient time to comply with the said Order of the Court and,

therefore, does not deserve to be granted any further extension of time. The application dated 6th May, 2004, is hereby rejected.

N. A. BRITTO, J.

RD.